

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

INFO-HOLD, INC.,	:	Case No. 1:11-cv-283
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	
vs.	:	
	:	
MUZAK HOLDINGS LLC, <i>et al.</i>	:	
	:	
Defendants.	:	

**ORDER GRANTING DEFENDANTS' MOTION TO REMOVE ATTORNEY  
EYES ONLY DESIGNATIONS OF THE SEPTEMBER 25, 2012 RULE 30(b)(6)  
DEPOSITION TRANSCRIPT OF INFO-HOLD (Doc. 93)**

This civil action is before the Court on Defendants' motion to remove all HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY designations from the September 25, 2012 Rule 30(b)(6) deposition transcript of Plaintiff Info-Hold, Inc. (Doc. 93). The motion was filed on December 6, 2012. Under S.D. Ohio Civ. R. 7.2(a)(2), a memorandum in opposition “shall be served and filed within twenty-one (21) days from the date of service set forth in the certificate of service attached to the Motion.” No response has yet been filed in this case, even though more than twenty-one days have passed since the service of the motion.

**I. BACKGROUND FACTS**

Plaintiff was deposed on September 25, 2012 pursuant to Fed. R. Civ. P. 30(b)(6). (Doc. 93 at 3). During the deposition, Plaintiff's counsel requested that a small fraction

of the deposition be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY (“Attorney Eyes Only”). (*Id.*) However, when the transcript was completed and distributed to the parties, every page had been marked Attorney Eyes Only, contrary to the Default Protective Order. (*Id.*) Defendants agree that certain portions should be marked Attorney Eyes Only and identified the five passages specified by Plaintiff’s counsel at the deposition in a letter to Plaintiff challenging the classification of the rest. (*Id.* at 4 and at Ex. 1). Plaintiff never responded to this letter. (*Id.*)

## II. ANALYSIS

The Default Protective Order permits Attorney Eyes Only designation for material that is not in the public domain and that a party “reasonably in good faith” believes contains:

particularly sensitive technical information relating to research for and production of current products; technical, business, and research information regarding future products; non-public and highly sensitive financial information; marketing and sales information, such as marketing plans and forecasts, customer lists, pricing data, cost data, customer orders, and customer quotations; any pending or abandoned patent applications, foreign or domestic; and other such documents, information, or materials that relate to other proprietary information that the designating party reasonably believes is of such nature and character that disclosure of such information would be harmful to the designating party.

(*Id.* at 5). With the exception of the five passages mentioned previously, the transcript does not satisfy these criteria. (*Id.*) Defendants challenged the improper designations but Plaintiff failed to “either remove or reduce the designation, or to respond that it has reviewed the matter and continues to maintain the designation in good faith” within ten

business days as required by the Default Protective Order. (*Id.*) Such silence demonstrates a rejection of good faith cooperation. Plaintiff has made no showing that any part of the deposition transcript, beyond the five identified passages, are appropriately designated Attorney Eyes Only.

### III. CONCLUSION

Accordingly, for the reasons stated here, Defendants' Motion to Remove Attorney Eyes Only Designations of the September 25, 2012 Rule 30(b)(6) Deposition Transcript of Info-Hold (Doc. 93) is **GRANTED**, and the entire transcript, but for the five identified portions,<sup>1</sup> shall have the Attorney Eyes Only Designations removed.

**IT IS SO ORDERED.**

Date: 1/8/13

*s/ Timothy S. Black*  
Timothy S. Black  
United States District Judge

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<sup>1</sup> 68:1 - 68:3; 193:12 - 195:6; 243:7 - 244:17; 258:9 - 270:18; 281:3 - 288:1